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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,832

05/14/2007

Roland Lyon

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27367 7590 01/20/2010  
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EXAMINER

LOFFREDO, JUSTIN E

ART UNIT

PAPER NUMBER

3744

MAIL DATE

DELIVERY MODE

01/20/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,832	<b>Applicant(s)</b> LYON, ROLAND	
	<b>Examiner</b> JUSTIN LOFFREDO	<b>Art Unit</b> 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 October 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. The amendment filed Oct. 13, 2009 has been entered. Claims 1-7 and 9-20 remain pending in the application.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 1, 6, 7, 16, 17 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Peer (US Patent No. 3,978,174) in view of Lyon (US Patent No. 4,360,368).

Consider claims 1, 16 and 20. Peer discloses an evaporative air conditioner (12) for delivering conditioned air to vehicle cabins, the air conditioner (12) comprising: an evaporation chamber defined by housing assemblies (24, 26) (see Figure 4 below) (col. 2, L 39-56), air directed towards the cabin via air outlet (68) while passing through at least one wet filter (96); a fan (see. e.g. col. 3, L 62-col. 4, L 13; Figs. 2-4) making it possible to pulse air into the evaporation chamber via a distribution box; a hose member (119) and vaporizer disc (89) (which

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make up the mister, as claimed), which delivers mist into the evaporation chamber, wherein the mister includes at least one discharge nozzle (121) (corresponding to the claimed injector); an impingement ring member (40) (corresponding to the claimed run-off in the vicinity of the filter) (col. 5, L 5-35); and a guide plate (58) (corresponding to the claimed deflector comprising a deflector plate); wherein the at injector (121) is positioned in relation to the deflector (58) so that the injector (121) expels water onto the vaporizer disc (89) and to the run off (40), the water then converging with the incoming airflow (130) as shown at (134) (see annotated Figure 4), which is at an outlet of the deflector (58) (corresponding to the claimed that the injector is positioned in relation to the deflector so that the injector expels water in a direction that, in the area of the run-off, converges with the airflow at an outlet of the deflector) (col. 4, L 46-55; col. 5, L 15-37; Figs. 2 & 4).

Peer fails to explicitly disclose that the fan is a turbofan, however Lyon discloses an evaporative air conditioner incorporating a turbofan (3) (see e.g. col. 2, L 63-66; Fig. 3). Therefore, the claim would have been obvious to one of ordinary skill in the art at the time of the invention because the substitution of one known element (i.e. a turbofan as disclosed by Lyon) for another (i.e. the fan disclosed by Peer) would have yielded predictable results; the predictable results being that air would be blown through the evaporation chamber via the distribution box for effective treatment and evaporative cooling.

Applicant should note that the limitation “a turbofan *making it possible to pulse air into the evaporation chamber via a distribution box*” is a recitation of the intended use of the claimed invention, which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Because the

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prior art structure in the instant case is capable of performing the intended use (i.e. it is possible to use the turbofan to pulse air into the evaporation chamber via a distribution box), it meets the claim.

Consider claim 6. Peer discloses sidewall sections (49) having cutout portion (54) (corresponding to the claimed delivery air distribution box), air being pulled inwardly through the air distribution box and the deflector plate (58) running in line with the distribution box (see Fig. 2) (col. 3, L 5-23; col. 5, L 5-16; Figs. 2 & 4).

Consider claim 7. Peer discloses that the deflector plate (58) contains a cut-out section in an upper edge (see Figure 3 magnified below).

Consider claim 17. Peer discloses that the evaporative air conditioner (12) includes vents or openings in the air outlet (68) to direct the outlet air flow as desired (corresponding to the claimed diffuser) (col. 3, L 30-42; Fig. 2).

5. **Claim 2** is rejected under 35 U.S.C. 103(a) as being unpatentable over Peer (US Patent No. 3,978,174) and Lyon (US Patent No. 4,360,368) as applied to claim 1, and further in view of Kelley (US Patent No. 5,361,600).

Consider claim 2. Peer discloses the invention as claimed, but fails to disclose the specific material for which the filter is comprised. Kelley teaches an evaporative air conditioner having a filter (130) such as a fiberglass mat to collect water (corresponding to the claimed hydrophilic material) (col. 5, L 35-38; Fig. 1), and it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the filter disclosed by Peer to comprise a hydrophilic material as taught by Kelley in order to collect any water not evaporated before the

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air flow contacting the mist reaches the filter; also resulting in the air being cooled as it passes through the filter and into the cabin of the vehicle.

6. **Claims 1-6, 9, 16, 17 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US Patent No. 4,360,368) in view of Peer (US Patent No. 3,978,174).

Consider claims 1, 16 and 20. Lyon discloses an evaporative air conditioner for vehicle cabins (ABST; col. 3, L 52-59), the air conditioner comprising: an evaporation chamber (see Figure 1 below), an outlet (11), at least one wet filter (12), a turbofan (3) making it possible to pulse air into the evaporation chamber via a distribution box, a mister (col. 3, L 12; Fig. 5) made up of nozzles (9, 10) (corresponding to the claimed at least one injector), a deflector (see Figures 3 & 4 below) and a surface of the wet filter (12) facing an inside of the evaporation chamber, wherein the at least one injector (9, 10) is positioned in relation to the deflector so that the injector (9, 10) expels water in a direction that converges with the airflow at an outlet of the deflector (col. 2, L 62-col. 3, L 12, 39-67; see annotated Figures 3 & 4; Figs. 5-7).

Lyon fails to disclose a run-off provided in the vicinity of the filter such that air and mist are capable of converging towards the run-off and being directed towards the surface of the filter, wherein the convergence of water with the airflow at the outlet of the deflector is in the area of the run-off. Peer teaches an evaporative air conditioner (12) for vehicle cabins comprising an impingement ring member (40) (corresponding to the claimed run-off) (col. 1, L 15-20; col. 2, L 39-col. 3, L 5; Figs. 1, 2 & 4), and it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the evaporative air conditioner disclosed by Lyon to incorporate the run-off as taught by Peer so that the run-off is in the vicinity of the filter such that air and mist are capable of converging towards the run-off and being directed towards the surface

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of the filter, wherein the convergence of water with the airflow at the outlet of the deflector is in the area of the run-off in order to more effectively guide the water mist to the filter to separate the droplets from the conditioned air.

Applicant should note that the limitation “a turbofan *making it possible to pulse air into the evaporation chamber via a distribution box*” is a recitation of the intended use of the claimed invention, which must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Because the prior art structure in the instant case is capable of performing the intended use (i.e. it is possible to use the turbofan to pulse air into the evaporation chamber via a distribution box), it meets the claim.

Consider claim 2. Lyon as modified discloses the invention as claimed, and Lyon specifically discloses that the filter (12) is of cellular, porous, fibrous or spongy material (col. 3, L 42-47) (corresponding to the claimed filter comprising a hydrophilic material).

Consider claim 3. Lyon as modified discloses the invention as claimed, and Peer specifically discloses the run-off (40) including at least one impact lip (see Figure 4). While neither Lyon nor Peer disclose the impact lip extending into an upper portion of the filter in a plane substantially coincident with the plane of the surface of the filter, it would have been an obvious mechanical expedient to an ordinarily skilled artisan at the time of the invention to modify the evaporative air conditioner disclosed by Lyon and Peer so that the impact lip of the run-off extended into an upper portion of the filter in order to more effectively guide the water mist directly to the top of the filter so that water droplets are more successfully separated from

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the conditioned air flow; the water collected to be recirculated and reused as mist water within the evaporative chamber (Lyon, col. 3, L 39-52).

Consider claim 4. Lyon as modified discloses the invention as claimed, and Peer specifically discloses that the impact lip is formed by a fold (see Figure 4 below where the fold is indicated as the bend point of the run-off leading to the impact lip) made in a the run-off (40) (corresponding to the claimed drop-out plate), fastened beneath top wall (35) (corresponding to the claimed closing cover) of the evaporation chamber (col. 2, L 56-col. 3, L5; see Figure 4 below). It should be noted that applicant disclosed (specification, p.10, L 9-10) that "the mist converge[s] towards *drop-out plate (7) forming run-off*", and therefore the examiner has determined that the run-off (40) disclosed by Peer constitutes a drop-out plate as discussed.

Consider claim 5. Lyon as modified discloses the invention as claimed, and Peer specifically discloses that the drop-out plate has a profile / raised portion, i.e. the indicated area is raised above the impact lip (see annotated Fig. 4).

Consider claim 6. Lyon as modified discloses the invention as claimed, and Lyon specifically discloses a delivery air distribution box (6); the deflector comprising a deflector plate (see Figures 3 & 4 below) running in line with the distribution box (6) (see Figure 3 below) (col. 2, L 66-col. 3, L 38).

Consider claim 9. Lyon as modified discloses the invention as claimed, and Lyon specifically discloses that the chamber includes a drain (13) (corresponding to the claimed drain-off point) paired with a supply pump (corresponding to the claimed extractor) (col. 3, L 46-52; Figs. 4 & 5).



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Lyon as modified fails to disclose at least two drain-off points; however it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art, and such duplication has no patentable significance unless a new and unexpected result is produced. In the instant case, the drain-off point is an essential working part of the device, wherein the duplication of the drain-off point results in the ability to drain condensate from merely another point on the evaporative chamber, which is neither a new nor an unexpected result since Lyon clearly discloses supplying a drain for the purposes of draining condensate from the evaporative chamber.

Consider claim 17. Lyon as modified discloses the invention as claimed, and Lyon specifically discloses a diffuser (18) (col. 3, L 52-59; Fig. 7).

7. **Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US Patent No. 4,360,368) and Peer (US Patent No. 3,978,174) as applied to claim 1, and further in view of Goettl (US Patent No. 3,147,319).

Consider claims 10 and 12. Lyon as modified discloses the invention as claimed, but fails to disclose the chamber having a liner at the bottom including at least one of: a covering having a material with a plurality of tubes joined to one another or intercommunicating cells; or a profiling having at least one water pass-through.

Goettl teaches an evaporative cooler having a bottom (18) and a pan (54) (corresponding to the claimed liner) (col. 3, L 56) including plates (60) and (108) extending to the bottom of liner (54) (corresponding to the claimed covering with a material and also corresponding to the claimed profiling) having openings such as openings (120) (corresponding to the claimed plurality of tubes joined to one other and also corresponding to the at least one water pass-

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through, which is a water pass through opening) (col. 4, L 75-col. 5, L 6; col. 6, L 3-8; Figs. 1-3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the evaporative cooler disclosed by Lyon as modified to incorporate the liner and covering or profiling as taught by Goettl in order to provide a means to prevent water from spilling during transportation of the evaporative cooler (Goettl, col. 6, L 3-8).

Consider claim 11. Lyon as modified discloses the invention as claimed, including a pad (28) made of a soft foam material (Goettl; col. 3, L 28-35), however Lyon as modified fails to disclose a pad being interposed between the covering and the bottom of the evaporative chamber (18). It would have been an obvious mechanical expedient to an ordinarily skilled artisan at the time of the invention to modify the space between the covering and the bottom of the chamber, that is between the bottom (18) and the liner (54), specifically disclosed by Goettl to include a pad made of a soft foam material in order to provide a soft, tight connection between the liner and the bottom of the chamber to inhibit excessive movement between the liner containing condensate water and the evaporative chamber, thereby reducing the likelihood of spillage during transportation.

8. **Claim 13** is rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US Patent No. 4,360,368) and Peer (US Patent No. 3,978,174) as applied to claim 9, and further in view of Calvert (US Patent No. 5,606,868).

Consider claim 13. Lyon as modified discloses the invention as claimed, including the extractor being connected to a tank (corresponding to the claimed water reservoir), which allows for a recycling configuration (see e.g. Lyon, col. 3, L 39-52).

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Lyon as modified fails to disclose a valve that enables a shift between the recycling configuration and a discharge configuration, but Calvert teaches a portable evaporative cooler unit having a drain valve (24), which enables the removal of residual water (corresponding to the claimed waste water). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the water discharge configuration disclosed by Lyon as modified to incorporate a drain valve for a discharge configuration for waste water removal as taught by Calvert in order to allow for the removal of old water so that fresher water may be pumped through the evaporative cooler, resulting in cleaner air cooling. Furthermore, it would have been an obvious mechanical expedient to an ordinarily skilled artisan to install a valve allowing a user to switch between the recycling configuration and the discharge configuration in order to provide a simple and reliable means to either allow the evaporative cooler to recycle the flow of water, or to drain the water so that it can be replaced periodically with clean water.

9. **Claims 14 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US Patent No. 4,360,368) and Peer (US Patent No. 3,978,174) as applied to claim 1, and further in view of Kelley (US Patent 5,361,600).

Consider claims 14 and 15. Lyon as modified discloses the invention as claimed, but fails to disclose a wetting means built into the wet filter; or the wetting means including a circulating system made of a porous material. Kelley teaches a wettable pad (70) and filter (130) placed at the face of the pad (70) (the assembly corresponding to the claimed wet filter), wherein water is applied to the upper surface of the pad (70) at a distribution tube (80) via pump (85) which delivers water from sump (50) via line (86) (col. 3, L 47-col.4, L 3; col. 5, L 35-42; Fig. 1) (corresponding to the claimed wetting means); and the wetting means including a fibrous

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material or a pad of treated paper having channels therein (corresponding to the claimed porous material) (col. 3, L 52-58). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the filter of the evaporative cooler disclosed by Lyon as modified to include the wetting means built into the filter as taught by Kelley in order to improve conditioning of the passing air by cooling via the evaporative effect.

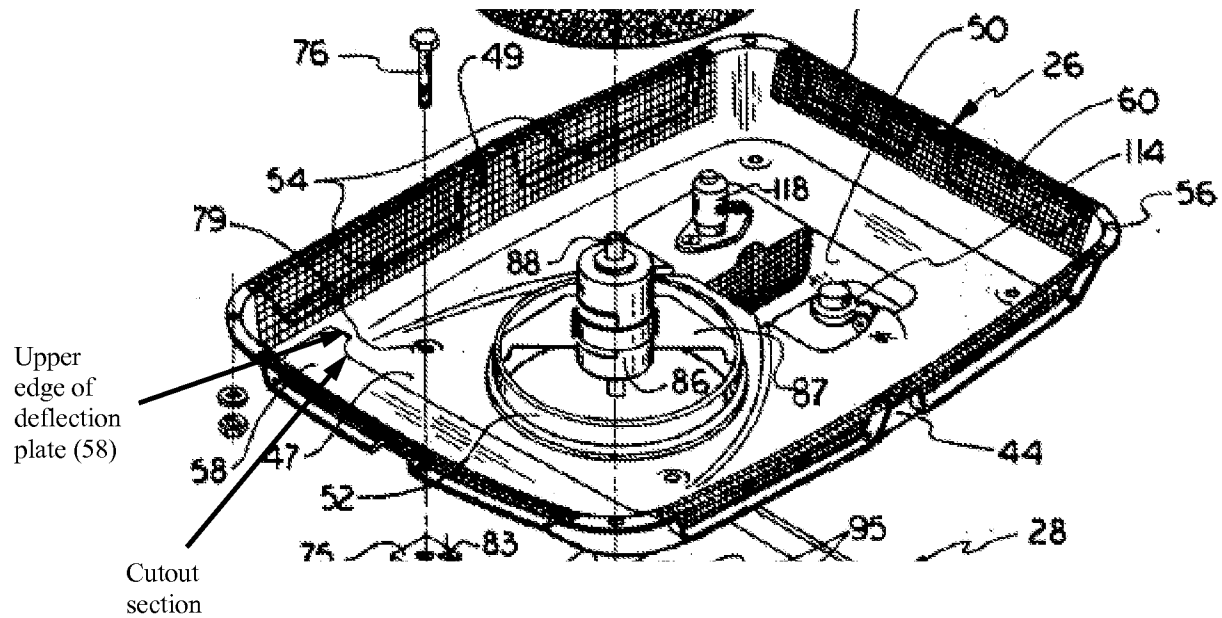
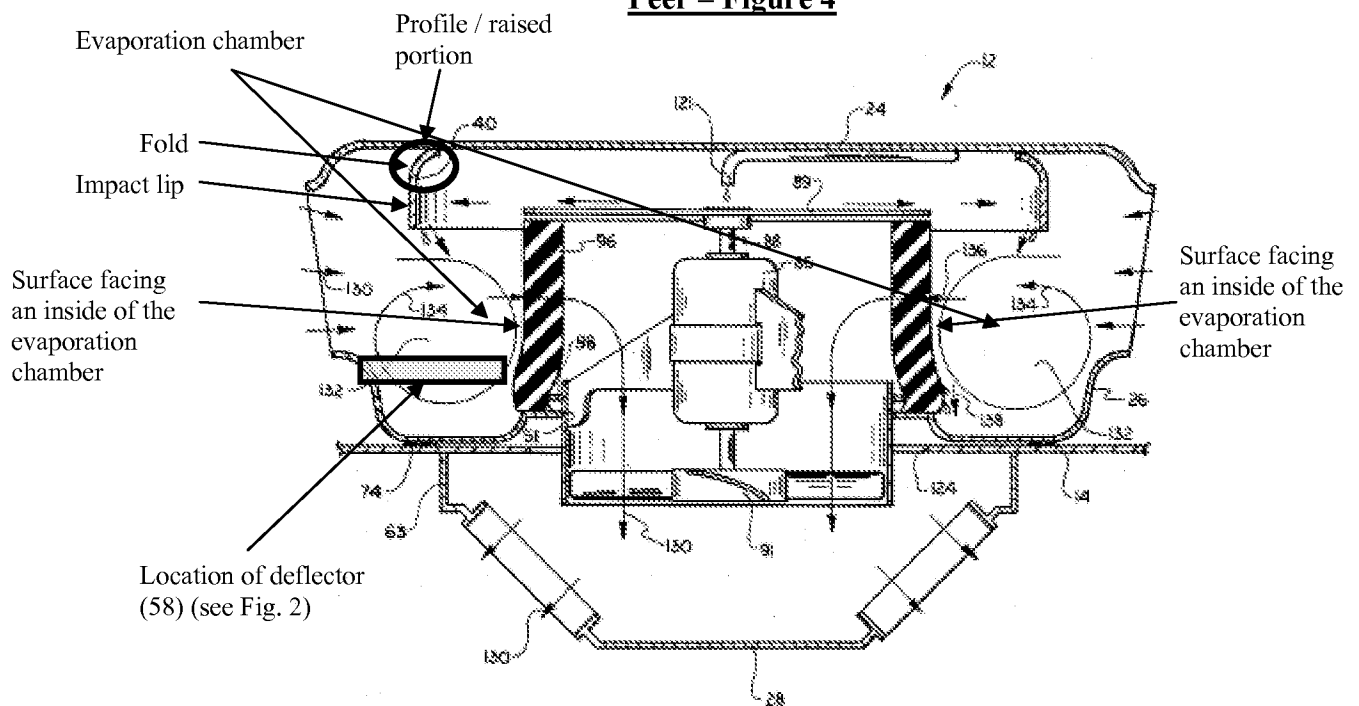
10. **Claims 18 and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyon (US Patent No. 4,360,368) and Peer (US Patent No. 3,978,174) as applied to claim 16, and further in view of Meckler (US Patent No. 5,954,577).

Consider claims 18 and 19. Lyon as modified discloses the invention as claimed, including a diffuser (18) (col. 3, L 52-59; Fig. 7). Lyon as modified fails to disclose a means of connecting the flow rate of the air from the air conditioner to a pressurization of the cabin; or the connecting means acting on the diffuser so that air is able to be directed towards the operator position when pressurization of the cabin decreases, and pointed in another direction when pressurization increases. Meckler teaches an air circulation and ventilation system for vehicles which includes a decontamination assembly (30) having an air quality sensor and pressure sensor (corresponding to the claimed means of connecting) wherein pressure control can assume control of fan speed (corresponding to the connection between cabin pressurization and air flow, which is dependent upon fan speed); wherein the air quality sensor acts on the damper (38) (corresponding to the claimed diffuser) to open (corresponding to airflow being directed towards the operator) when contamination is detected at preset levels and to close (corresponding to airflow being directed in another direction) when contamination is below preset levels.

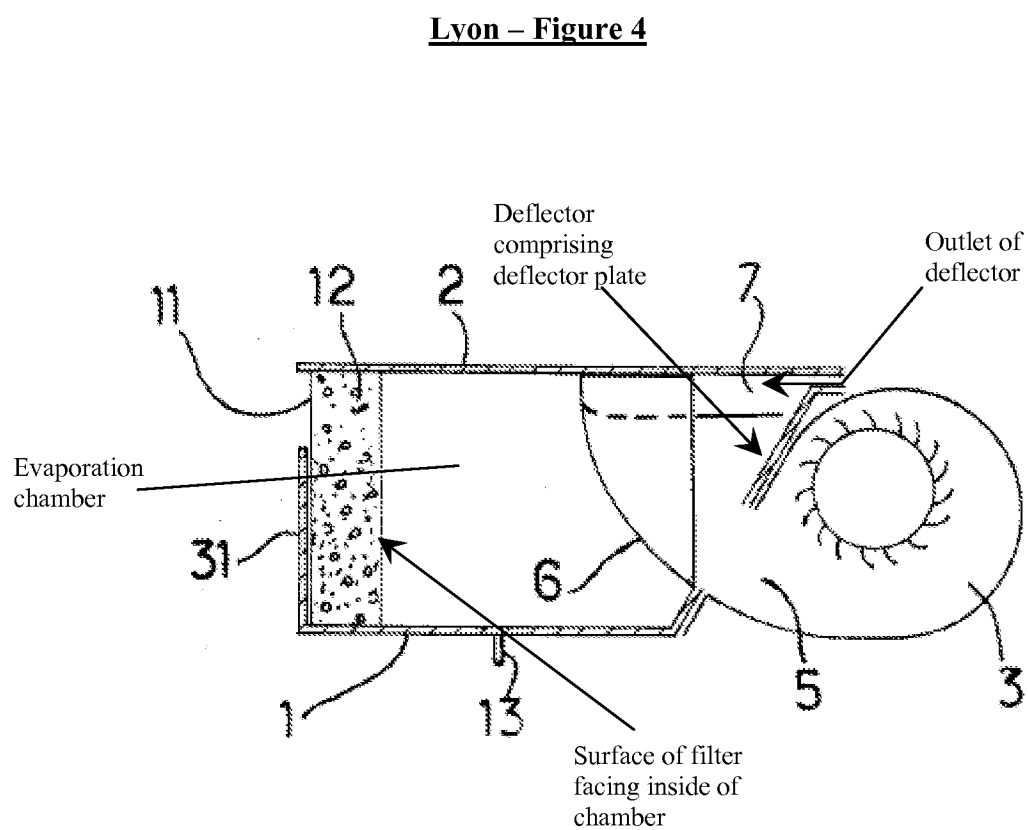
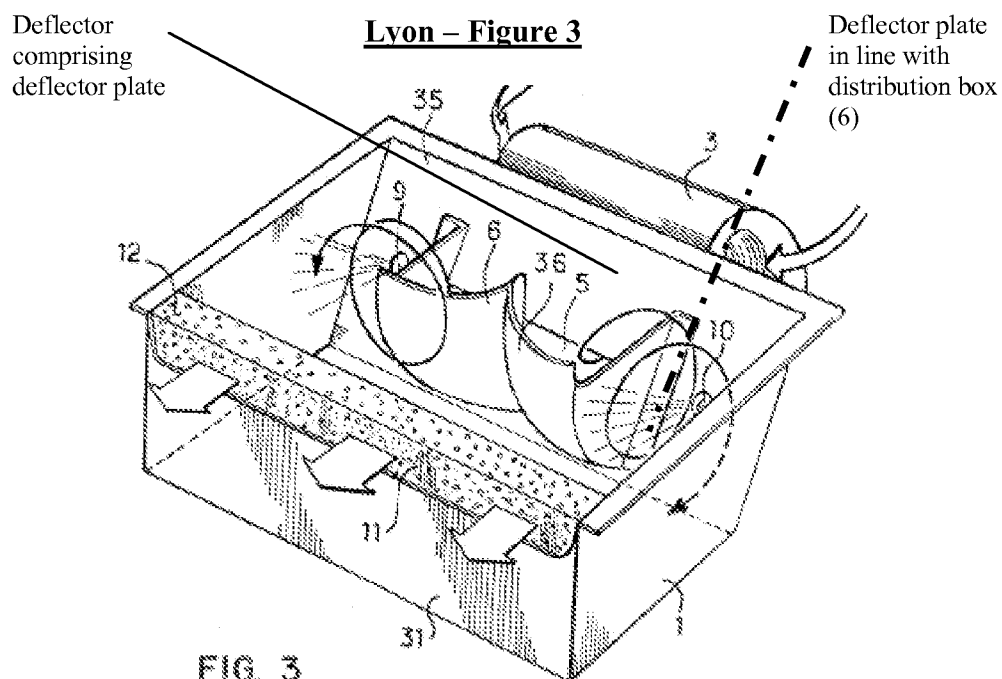
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When pressure drops, the fan speed increases so the airflow rate increases and air passes through diffuser (38) (i.e. the diffuser is open and directing air towards the operator), and therefore after a period of time when pressure increases and the contamination is determined to be below the preset level, the fan speed decreases so the airflow rate decreases and diffuser is closed (38) (ABST; col. 14, L 4-25; Figs. 1 & 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the evaporative air conditioning assembly within a vehicle disclosed by Lyon as modified to incorporate a connecting means to operate the diffusers and adjust the airflow based on the cabin pressure as taught by Meckler in order to effectively maintain a clean and conditioned environment within the cabin while providing a convenient, automated damper controlling mechanism.

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**Peer – Figure 3 (magnified)****Peer – Figure 4**

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***Response to Arguments***

11. Applicant's arguments filed Oct. 13, 2009 have been fully considered but they are not persuasive for the following reasons.

12. In response to applicant's argument (Remarks, p. 10) that per amended claim 1, the turbofan pulses the air into the evaporation chamber, this limitation is not claimed. What is claimed is the following: "a turbofan making it possible to pulse air into the evaporation chamber via a distribution box" (claims 1, 16 and 20). Therefore, as claimed, the turbofan makes it *possible* to pulse air into the evaporation chamber, but the fan does not necessarily have to pulse air into the evaporation chamber. It is noted that this feature upon which applicant relies (i.e., that a turbofan pulses air into the evaporation chamber) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

13. In response to applicant's argument (Remarks, p. 10) that per amended claim 1, water is introduced in the evaporation chamber directly in mist form by the mister, this limitation is not claimed. The claims merely recite: "a mister, which delivers mist into the evaporation chamber" (claims 1, 16 and 20). Therefore, as claimed, each of the apparatuses disclosed by Lyon and Peer include a mister, which delivers mist into the evaporation chamber (refer to the rejection of claims 1, 16 and 20) as claimed. It is noted that this feature upon which applicant relies (i.e., that water is introduced in the evaporation chamber *directly* in mist form by the mister) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*.



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14. In response to applicant's argument (Remarks, p. 11) that the apparatuses of Lyon and Peer do not effectively solve the technical problem overcome by applicant's invention, this is unpersuasive because applicant has presented claims drawn to an air conditioning apparatus, and the structure of each of the air conditioners disclosed by Lyon and Peer render the claims unpatentable. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Because the prior art structure here is capable of performing the intended use, it meets the claim.

15. In response to applicant's argument (Remarks, p. 12) that neither Lyon nor Peer discloses an implementation of applicant's structure allowing for an efficient double action of purification and cooling, examiner respectfully disagrees. It is noted that the features upon which applicant relies (i.e., a double action of purification and cooling) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*.

Furthermore, even if this argued limitation was incorporated into the claims it would be a recitation of the intended use of the claimed invention (here the intended use is to purify and cool with high efficiency). Such a recitation of intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art, and because the prior art structure here is capable of performing this intended use, it would meet the claim.

16. In response to applicant's argument (Remarks, p. 12) that it is not possible to generate a mist spray cone using the inventions of Lyon or Peer, features upon which applicant relies (i.e.,

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generation of a mist spray cone) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*.

17. In response to applicant's argument (Remarks, p. 12) that examiner incorrectly identified functional language in the previous written office action, examiner respectfully disagrees. While examiner's identification of functional language has not been reproduced in this office action, it is only in order to avoid repetition and not because examiner agrees with applicant's assertion that the identified language is not functional.

One example of functional language in the claims is: "a raised portion or profile *designed to evenly distribute the water over said lip*" (claim 5, line 2). This appears to be a clear example of functional language because the structure, a raised portion or profile, is modified by language regarding its intended use, to evenly distribute the water over said lip. As long as the prior art discloses a raised portion or profile, which Peer does (see annotated Fig. 4), and that raised portion or profile is designed so that it is capable of evenly distributing the water over said lip, which is the case for the cited prior art, the prior art meets the claim. Furthermore, examiner notes that applicant failed to present any additional information or evidence supporting the assertion that the claimed phrases are not in fact functional language, i.e. how such recitations represent structural limitations.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN LOFFREDO whose telephone number is (571) 270-7114. The examiner can normally be reached on M - F 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler and Frantz Jules can be reached on (571) 272-4834 and (571) 272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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